

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/647,980	PITSCH, KARL-HEINZ	
	<b>Examiner</b>	<b>Art Unit</b>	
	PAUL DANNEMAN	3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 11 September 2008.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1,3-8,10-13,15-20,22-27,29-34,36-39,41-46 and 48-51 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1,3-8,10-13,15-20,22-27,29-34,36-39,41-46 and 48-51 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_.

#### DETAILED ACTION

##### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11 September 2008 has been entered.

#### **Status of the Claims**

2. Claims 1, 8, 10, 12, 15, 19, 27, 34, 36, 38, 45 and 48 have been amended.  
3. Claims 2, 9, 14, 21, 28, 35, 40 and 47 have been canceled.  
4. Claims 1, 3-8, 10-13, 15-20, 22-27, 29-34, 36-39, 41-46 and 48-51 are pending and have been examined in this application.

#### **Response to Amendment**

5. Objection to the drawing known as Fig.4 is respectfully withdrawn. The Examiner thanks the applicant for clarifying the record.  
6. The objection to Claim 20 and 40 are withdrawn as applicant has corrected the dependency of those claims.

#### **Response to Arguments**

7. Applicant's arguments with respect to claims 1, 8, 12, 19, 27, 34, 38 and 45 have been considered but are moot in view of the new ground(s) of rejection.  
8. Applicant argues that "***Klein is focused on providing the right hair care formulation for a specific individual's hair.***" Applicant further argues that "***The present invention, however, is directed to providing a desired amount of a pre-formulated product, so that small beauty entities***

***do not have to purchase any more of a product then they actually use, thereby reducing expenses and saving space.***" The Examiner has carefully considered Applicant's arguments and must respectfully disagree. Applicant in at least paragraph [0009] discloses that the present invention determines an amount of each base stock color required to prepare the shade selected by said professional, dispensing the selected amounts into a tray and delivering the tray to the professional user.

9. ***Applicant argues regarding Claims 12, 19, 38 and 45, comprise "determining an amount of each base stock color required to prepare and shade by said professional user. Klein does not teach or suggest this limitation. Klein teaches away from the present invention because the machine selects the right formulation for the customer's particular type of hair- not the professional user (as incorrectly alleged by the Examiner).***" Respectfully the Examiner must disagree. Applicant in at least paragraph [0009 and 0010] discloses that the present invention determines (***a processor***) an amount of each base stock color required to prepare the shade selected by said professional, dispensing the selected amounts into a tray and delivering the tray to the professional user. The professional is selecting the shade and the vending machine is selecting the appropriate amount of each base color required to render the shade.

10. Applicant argues that "***the present invention comprises transmitting transaction data to a central computer over a communication network. Nowhere does Ushikubo disclose transmitting transaction data to a central computer over a communications network.***" Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

#### ***Claim Rejections - 35 USC § 103***

11. ***Claims 1, 3-8, 10-13, 15-20, 22-27, 29-34, 36-39, 41-46 and 48-51*** rejected under 35 U.S.C. 103(a) as being unpatentable over Klein et al., US 5,163,010 hereafter known as Klein and further in view of Ushikubo, US 4,767,917 and further in view of Bartholomew et al., US 7,099,740 B2 hereafter known as Bartholomew.

**Claims 1, 8, 12, 19, 27, 34, 38, and 45:**

With regard to the limitations:

- ***A vending device for hair care or cosmetic products,***

Klein in at least Column 1, lines 7-11 discloses a device for formulating cosmetic product and dispensing a custom mix of the active chemicals in response to a customer's criteria at a Point-of-Sale. Klein in at least Column 2, lines 5-29 further discloses a means for entering the specific input criteria based on a customer's need and a computer outputting a series of instruction sets, dispensing a product (permanent waving solutions, shampoos, dyes, skin lotions, etc.) at a point of sale. Klein in at least Column 6, lines 9-14 discloses the customer criteria are first characterized by the beauty parlor operator.

- ***Sales to authorized personnel,***

Klein does not specifically disclose restricting sales to authorized personnel per se, however in at least Column 6, lines 9-14 discloses the customer criteria are first characterized by the beauty parlor operator. Klein in at least Column 6, lines 39-46 further discloses a beauty parlor operator obtaining a much finer description of a client's hair at any one given time to provide more reproducible results from one permanent wave treatment to the next and still further discloses, in at least Column 9, lines 53-56 the stylist applying one of the dispensed products on the client's hair. Ushikubo, in at least Column 2, lines 45-63 discloses a vending machine wherein a sale is effected only when an authorized user using a registered which is validated. Therefore, it would be obvious, at the time of the invention, to one of ordinary skill to modify Klein with the security features of Ushikubo to insure that only properly authorized personnel dispensed hair chemicals for use on a client's hair.

- ***Connected to a central computer to remotely maintain inventory data, and handle transactions.***

Klein does not disclose inventory data per se, however Klein in at least Column 9, lines 62-67 and Column 10, lines 1-36 discloses the computer dispensing by weight the required formulation and still further in at least Column 11, lines 37-51 making a determination that a specified amount of

product remains in inventory permitting a certain number of perms to be formulated and asking whether the tanks of solution should be refilled (Fig.6a), hence it would be obvious that the computer keeps a running total of each product dispensed. Ushikubo does not specifically disclose communicating the inventory data. However, Ushikubo in at least Column 5, lines 28-32 discloses maintaining a list of goods which have been sold within the automatic vending machine. Bartholomew in at least Column 2, lines 19-31 discloses a system for the packaging and mixing of a custom cosmetic. Bartholomew in at least Column 6, lines 44-67 and Column 7, lines 1-2 discloses compiling the data collected through the web site or elsewhere into a database and using the data concerning the quantities of inventory of a color or effect to stock or manufacture. Bartholomew in at least Column 6, lines 6-23 and lines 28-36 discloses internet related transactions using credit cards and other payment methods. Therefore, it would be obvious, at the time of invention, to one of ordinary skill to modify the Klein/Ushikubo inventory methods with Bartholomew method for using a network connected to a vending system to collect and transmit inventory data and transaction information with the motivation of insuring that the remote vending system is always properly stocked.

**Claims 4-7, 10-11, 15-16, 18, 22-23, 25-26, 30-33, 36-37, 41, and 48-51:**

With regard to the limitations:

- ***Sales to authorized personnel,***
- ***Processing a payment,***
- ***Printing a receipt.***

Klein does not disclose processing a payment or printing a receipt, *per se*. However, Klein in at least Column 2, lines 5-8 discloses a point-of-sale and in at least Fig.1 and Column 2, lines 52-67 discloses a device representing a point-of-sale with an input means for formulating and dispensing a cosmetic formulation as requested. Klein in at least Fig.6e and Column 12, lines 26-34 discloses an automatic printout of a client code number at the point-of-sale. Ushikubo in at least Column 5, lines 22-51 discloses the conveyance of goods, the payment for those goods and

the printing of a list of the goods that were sold. Therefore, it would be obvious, at the time of the invention, to one of ordinary skill to conclude that a point-of-sale with a printer by its nature is able to process payments and print receipts. Therefore, it would be obvious, at the time of the invention, to one of ordinary skill to modify Klein with the payment features of Ushikubo to insure that goods were properly paid for, the sale was properly recorded and a receipt was supplied.

**Claims 3, 13, 17, 20, 24, 29, 39, 42-44, and 46:**

With regard to the limitations:

- *Mixing formulations per input criteria (shade, hair condition, etc.),*
- *Dispensing formulations.*

Klein in at least Fig.6f, Column 12, lines 65-67 and Column 13, lines 1-2 discloses the display of the device indicating that a formulation is being dispensed and mixed and an indication when the dispensing and mixing is completed. Klein in at least Fig.7, Column 13, lines 40-42 discloses an optional sound circuit which may be utilized during the dispensing cycle and in lines 49-55 dispensing a specific weight of the solutions into a receptacle. Klein in at least Column 14, lines 32-39 still further discloses that the device has a dispensing means for automatically dispensing said plurality of cosmetically functional mixtures sequentially from their respective container in a formulation receptacle at the point-of-sale. Therefore, it would be obvious, at the time of the invention, to one of ordinary skill to conclude that Klein's anticipates the invention's mixing and dispensing of cosmetic formulations.

***Conclusion***

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL DANNEMAN whose telephone number is (571)270-1863. The examiner can normally be reached on Mon.-Thurs. 6AM-5PM Fri. off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Florian Zeender can be reached on 571-272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Paul Danneman/

Examiner, Art Unit 3627

27 November 2008

/F. Ryan Zeender/  
Supervisory Patent Examiner, Art Unit 3627